INSOL INTERNATIONAL
FOUNDATION CERTIFICATE
IN INTERNATIONAL INSOLVENCY LAW

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2B

THE EUROPEAN INSOLVENCY REGULATION

This is the **summative (formal) assessment** for **Module 2B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 2**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 2B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment2B]**. An example would be something along the following lines: 2021122-526.assessment2B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the word "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.1 If you selected Module 2B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

6.2 If you selected Module 2B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of **9 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

The EIR 2000 substantively harmonised the national insolvency law of the Member States.

(a) False. The objective of an EU regulation is not legal harmonisation.

(b) True. Since the entry into force of the EIR 2000, the insolvency laws of the Member States are similar.

(c) False. The objective of the EIR 2000 was not to harmonise aspects of national insolvency laws but to provide non-binding guidelines only.

(d) False. While the EIR 2000 attempted to harmonise national insolvency laws, its focus was on procedural aspects of insolvency law, not substantive ones.

D was the correct answer.

Question 1.2

The EIR 2000 was the first ever European initiative to attempt to harmonise the insolvency laws of Member States.

(a) False. The EU sought to draft Conventions with a view to harmonising the insolvency laws of EU Member States as early as the 1960s, but these initiatives failed.

(b) False. There was another EU Regulation regulating insolvency law at EU level before the EIR 2000.

(c) True. Before the EIR 2000, the EU has not sought to harmonise the insolvency laws of EU Member States.

(d) False. An EU Directive regulating insolvency law at EU level existed before the EIR 2000.

Question 1.3

The EIR Recast was urgently needed because the EIR 2000 was considered dysfunctional and ineffective.

(a) True. The EIR 2000 proved to be inefficient and incapable of supporting the effective resolution of cross-border cases over the years.

(b) True. As a result, the EIR 2000 lacked the support of major stakeholders such as insolvency practitioners, businesses and public authorities who considered the instrument fruitless.

(c) False. While a number of shortcomings were identified by an evaluation study and a public consultation, the EIR 2000 was generally regarded as a successful instrument by most stakeholders, including practitioners, businesses, the EU institutions and insolvency academics.

(d) False. The EIR 2000 was considered a complete success to support cross-border insolvency cases and, as a result, the wording of the EIR Recast mirrored its 2000 predecessor.

Question 1.4

Why can it be said that the EIR Recast did not overhaul the *status quo*?

(a) The EIR Recast is a copy of the EIR 2000. Its structure and the wording of all articles are similar.

(b) Although the EIR Recast includes relevant and useful innovations, it has stuck with the framework of the EIR 2000 and mostly codified the jurisprudence of the CJEU.

(c) The EIR Recast has not added any new concept to the text of the EIR 2000.

(d) It is incorrect to say that the EIR Recast has not overhauled the *status quo* at all. On the contrary, the EIR Recast has departed from the text of its predecessor and is a completely new instrument which has rejected all existing concepts and rules.

Question 1.5

Why can it be said that the EIR Recast is more rescue-oriented than the EIR 2000?

(a) The EIR Recast is more rescue-oriented because all domestic rescue procedures fall within its scope.

(b) The EIR Recast is more rescue-oriented because it harmonises all substantive aspects of national insolvency laws.

(c) It is incorrect to say that the EIR Recast is more rescue-oriented than the EIR 2000, as the latter was already heavily rescue-focused.

(d) The EIR Recast is more rescue-oriented because its scope was extended to cover pre-insolvency proceedings and secondary proceedings can now also be rescue proceedings.

Question 1.6

During the reform process of the EIR 2000, what main elements were identified as needing to be revised within the framework of the Regulation (whether adopted or not)?

(a) The scope of the Regulation was to be expanded to cover pre-insolvency and hybrid proceedings; the concept of COMI was to be refined; secondary proceedings were to be extended to rescue proceedings; rules on publicity of insolvency proceedings and lodging of claims were to be amended; provisions for group proceedings were to be added.

(b) Rules on co-operation and communication between courts were to be refined; the concept of COMI was to be abandoned and a new jurisdictional concept was to be found; the Recast Regulation was to apply to Denmark.

(c) The Recast Regulation was to apply to private individuals and self-employed; a common European-wide insolvency proceeding was to be added to the Regulation.

(d) The Regulation was meant to fully embrace the universalism principle by abandoning the concept of secondary proceedings; the Regulation was meant to mostly promote out-of-court settlement and abandon all intervention of a judicial or administrative authority in cross-border proceedings.

Question 1.7

The EIR Recast introduced the concept of "synthetic proceedings". What are they?

(a) "Synthetic proceedings" means that for the case at hand, several main proceedings can be opened, in addition to several secondary proceedings.

(b) "Synthetic proceedings" means that when secondary proceedings are opened, these are automatically rescue proceedings, as opposed to liquidation proceedings.

(c) "Synthetic proceedings" means that insolvency practitioners in all secondary proceedings should treat the proceedings they are dealing with as main proceedings for the purpose of protecting the interests of local creditors.

(d) "Synthetic proceedings" means that when an insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court asked to open secondary proceedings should not, at the request of the insolvency practitioner, open them if they are satisfied that the undertaking adequately protects the general interests of local creditors.

Question 1.8

In which of the following scenarios may the recognition of a foreign insolvency proceeding be denied under the EIR Recast?

(a) The rule applied by the court, which has opened insolvency proceedings (originating court), is unknown or does not have an analogue in the law of the jurisdiction, in which recognition is sought.

(b) The judgment, subject to recognition, was passed with incorrect application of the applicable substantive law.

(c) Where the decision to open the insolvency proceedings was taken in flagrant breach of the right to be heard, which a person concerned by such proceedings enjoys.

(d) The court, which has opened insolvency proceedings (originating court), most certainly did not have international insolvency jurisdiction to do so under the EIR Recast.

Question 1.9

In a cross-border dispute, the main proceedings before the Italian court opposes Fema SrL (registered in Italy) and Lacroix SARL (registered in France). The case concerns an action to

set aside four contested payments that amount to EUR 850,000. These payments were made pursuant to a sales agreement dated 5 August 2020, governed by German law. The contested payments have been made by Fema SrL to Lacroix SARL before the former went insolvent. The insolvency practitioner of the company claims that under applicable Italian law, the contested payments shall be set aside because Lacroix SARL must have been aware that Fema SrL was facing insolvency at the time the payments were made.

Considering the facts of the case and relevant provisions of the EIR Recast, which one of the following statements is the **most accurate**?

(a) The insolvency practitioner will always succeed in his claim if he can clearly prove that under the *lex concursus*, the contested payments can be avoided (Article 7(2)(m) EIR Recast).

(b) The contested transactions cannot be avoided if Lacroix SARL can prove that the *lex causae* (including its general provisions and insolvency rules) does not allow any means of challenging the contested transactions, and provided that the parties did not choose that law for abusive or fraudulent ends.

(c) To defend the contested payments Lacroix SARL can rely solely, in a purely abstract manner, on the unchallengeable character of the payments at issue on the basis of a provision of the *lex causae*.

(d) The contested payments shall not be avoided if Lacroix SARL proves that such transactions cannot be challenged on the basis of the insolvency provisions of German law (Article 16 EIR Recast).

Question 1.10

The French Social Security authority asserts to have a social security contribution claim against an Irish company, Cupcake Cottage Ltd. Cupcake Cottage is subject to the main insolvency proceeding (Examinership) in Ireland. In addition, a secondary insolvency proceeding (*Concurso*) relating to the same company has been opened in Spain.

Assume that:

- Under French law, creditors (except employees) must file proof of their claim within two (2) months from the publication in the French legal gazette of a notice of the judgment opening the insolvency proceedings.

- Under Spanish law, the period within which creditors must file their claims is one month, as set in the order opening secondary insolvency proceedings against Cupcake Cottage.

The French tax authority intends to file its claim in the Spanish proceedings. Within which time period can the French tax authority do so?

(a) Within two (2) months following the publication date, as guaranteed by the French law (law applicable to the creditor).

(b) Within one month, as stipulated in the applicable *lex concursus secundarii* (law of the insolvency proceeding at issue).

(c) Within 30 days following the publication of the opening of insolvency proceedings in the insolvency register of Spain.

(d) Within the time limit prescribed by the *lex concursus* of the main insolvency proceeding (Irish law).

C was the correct answer.

Total marks : 8 out of 10.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] 2

The following **two (2) statements** relate to particular provisions / concepts to be found in the EIR Recast. Indicate the name of the provision / concept (as well as the relevant EIR Recast article), addressed in each statement.

Statement 1. "This article introduces a legal regime for the avoidance of secondary insolvency proceedings, based on the unilateral promise given by the main insolvency practitioner to local creditors that they will receive treatment 'as if' secondary proceedings had in fact been open.'

Statement 2. "The proper functioning of the internal market requires that cross-border insolvency proceedings should operate effectively. This requires judicial cooperation."

Statement 1 – this relates to Article 36 of EIR Recast, the "Right to give an undertaking in order to avoid secondary insolvency proceedings".

Statement 2 – this relates to Article 42 of the EIR Recast, "Cooperation and communication between courts".

Question 2.2 [maximum 3 marks] 3

The EIR Recast is built upon the concept of modified universalism, as pure universalism has been deemed idealistic and impractical for the time being. Provide **three (3) examples** of provisions from the EIR Recast, which highlight this modified universalism approach.

Article 19(2) of the EIR Recast provides that the recognition of main proceedings shall not preclude the opening of secondary proceedings. The opening of secondary insolvency proceedings leads to the creation of a separate insolvency estate and the application of a separate lex concursus, i.e. the law of the Member State where the establishment is located.

Article 7(1) provides that the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened. However, Article 8 limits this by providing that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets, both specific assets and collections of indefinite assets as a whole which change from time to time, belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings.

Further, Article 13 provides that the effects of insolvency proceedings on employment contracts and relationships shall be governed solely be the law of the Member State applicable to the contract of employment (*lex contractus*).

Question 2.3 [maximum 3 marks] 3

Cross-border co-operation and communication between courts is now an obligation under the EIR Recast. This was not the case under the EIR 2000. List **three (3) provisions** (recitals and / or articles) of the EIR Recast that deal with this newly introduced obligation.

Article 42 – cooperation and communication between courts

Article 43 – cooperation and communication between insolvency practitioners and courts

Article 44 – costs of cooperation and communications

Question 2.4 [maximum 2 marks] 1.5

It is widely accepted that the opening of secondary proceedings can hamper the efficient administration of the debtor's estate. For this reason, the EIR Recast has introduced a number of legal instruments to avoid or otherwise control the opening, conduct and closure of secondary proceedings. Provide **two (2) examples** of such instruments and briefly (in 1 to 3 sentences) explain how they operate.

In order to avoid the opening of secondary insolvency proceedings, the insolvency practitioner in the main insolvency proceedings may give a unilateral undertaking in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, he will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that member state.

The opening of secondary proceedings may frustrate the process of negotiations and undermine business rescues. To prevent this, the EIR Recast process for the possibility for the court to temporarily stay the opening of secondary insolvency proceedings when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings. The stay of the opening of secondary proceedings therefore preserves the efficiency of the stay granted in the main insolvency proceedings.

Yes but what are the provisions in relation to these examples (articles and/or recitals)?

Total marks : 9.5 out of 10.

QUESTION 3 (essay-type questions) [15 marks in total]

In addition to the correctness, completeness (including references to case law, if applicable) and originality of your answers to the questions below, marks may be awarded or deducted on the basis of your presentation, expression and writing skills.

Question 3.1 [maximum 5 marks] 5

In 2012, the European Commission recommended that the European Insolvency Regulation be amended by focusing on specific aspects of the instrument. Explain what these aspects were and how they have been introduced in the EIR Recast.

The findings of the European Commission in 2021 identified five main shortcomings with the EIR 2000:

1. It did not cover national procedures which provide for a restructuring of the company at a pre-insolvency stage, or proceedings which leave the existing management in place;
2. There can be difficulties in determining which member state is competent to open insolvency proceedings;
3. The opening of secondary insolvency proceedings can hamper the efficient administration of the company's estate;
4. It is difficult to obtain reliable information on proceedings in other jurisdictions, in the absence of effective rules on publicity of insolvency proceedings and the lodging of claims;
5. The EIR did not contain specific rules dealing with the insolvency of a multinational enterprise group, despite a large number of cross-border insolvencies involving groups of companies.[1]

The EIR Recast addressed these issues in the following ways:

1. It extends not only to traditional liquidation-orientated procedures but also to proceedings aiming at rescuing economically viable but financially distressed businesses.
2. Limits were placed on the opening of secondary proceedings through:
    a. Article 36 – (Synthetic proceedings) - when an insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court asked to open secondary proceedings should not, at the request of the insolvency practitioner, open them if they are satisfied that the undertaking adequately protects the general interests of local creditors.
    b. the EIR Recast process for the possibility for the court to temporarily stay the opening of secondary insolvency proceedings when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings.
3. Article 28(1) of EIR Recast obliges the insolvency practitioners to request the publication of the notice on the opening of insolvency proceedings, whether main or secondary, in the place of the debtor's establishment. Further, Article 54 compels the court which has opened insolvency proceedings or the insolvency practitioner appointed by such court to immediately inform the known foreign creditors as soon as insolvency proceedings are opened. The timely notification and visibility of insolvency proceedings is equally facilitated by the creation of national insolvency registers (Article 24) and the EU-wide decentralized system for the interconnection of insolvency registers to be launched via the E-Justice portal (Article 25)

Question 3.2 [maximum 5 marks] 5

While the EIR 2000 was considered to work well overall, several innovative concepts and rules were introduced in the EIR Recast to improve the manner in which the Regulation supports the administration of a cross-border case in an efficient manner. Describe **three (3)** improvements / innovations that made their way into the EIR Recast.

The concept of "establishment" is essential to the opening of secondary proceedings, as secondary proceedings can be opened in any country where the debtor has an establishment. It must be scrutinised as of the moment of the filing for the opening of secondary insolvency proceedings. If the necessary criteria are not met at that moment, the court must look at whether there was an establishment in the three-month period before the filing (Article 2(10)). If this is the case, the court has jurisdiction to open secondary proceedings. This rule is a

[1] "The recast EU Insolvency Regulation and its impact on distressed investing", by James Bell, Douglas Hawthorn and Jeremy Walsh of Travers Smith LLP

novelty of the EIR Recast and has been introduced to guarantee protection of local creditors in the event of pre-insolvency forum shifts or cessation of the establishment's operations.

Recital 10 provides that EIR Recast should, in particular, extend to proceedings which provide for restructuring of a debtor at a stage where there is only a likelihood of insolvency, and to proceedings which leave the debtor fully or partially in control of its assets and affairs. The emphasis on restructuring is a noticeable innovation of the EIR Recast. EIR 2000 mentioned only proceedings entailing partial or total divestment of a debtor and the appointment of a liquidator.

The EIR 2000 did not contain a definition of centre of main interest and just provided some guidance in its Recital 13. EIR Recast, by contrast, mandates that the COMI shall be where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties (Article 3(1)). While the words are almost identical to those in Recital 13 of EIR 2000, including them in the main text of the regulation gives the definition authority, as a recital is not enforceable.

Question 3.3 [maximum 5 marks] 4

While the EIR Recast was welcomed by most stakeholders, it was also criticised by some as a "missed opportunity" and "modest". List **two (2) flaws** or shortcomings of the EIR Recast and explain how you consider they could be corrected.

The regulation of group co-ordination proceedings (Chapter V, Section 2) will probably fall short of securing the efficient administration of group insolvency proceedings, including coordinated restructuring of the group. The voluntary nature of group co-ordination proceedings (Recital 56) and the possibility of an easy opt-out without explanation or good cause (Article 56) make the group co-ordination proceedings a toothless instrument. Moreover, even if such proceedings have been instituted, the insolvency practitioners are not obliged to follow the co-ordinators recommendations or the group co-ordination plan in whole or in part (Article 70). This could be improved by making group co-ordination proceedings mandatory, or to make the recommendations of the group-coordinator binding.

Total marks : 14 out of 15.

QUESTION 4 (fact-based application-type question) [15 marks in total]

Cardinal Home is an Ireland-registered furniture company. The company opened its first store in Cork, Ireland in 2009 and has warehouses across Europe, including in Milan, Italy. In 2010, Cardinal Home entered into a credit agreement with an Italian bank since it was planning to expand its reach to the Spanish luxury furniture market, expected to grow by over 8% annually. It opened a bank account with the bank and started negotiating with local distributors, thus signing some (non-binding) memoranda of understanding with them.

Cardinal Home grew and performed well for several years. However, the impact of the economic and financial crisis of the late 2000s eventually hit the company who suffered financial difficulties from 2016. On 22 June 2017, it filed a petition to open examinership proceedings in the High Court in Dublin, Ireland.

Question 4.1 [maximum 5 marks] 5

Assume that the EIR 2000 applies. Does the Dublin High Court have international jurisdiction to open the requested insolvency proceeding? (Explain why it does or does not have

jurisdiction.) Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

The case of Eurofood IFSC Ltd is relevant here and is one of the most important cases on the interpretation of the EIR 2000. In that case, the court stressed that the concept of COMI is peculiar to the regulation. Eurofood had a registered office in Ireland, and was a wholly owned subsidiary of an Italian company. Eurofood's principal objective was the provision of financing facilities for companies within the Parmalat group. Administration proceedings were opened in Italy in respect of the Italian company. Shortly afterwards, an application was made to the High Court of Ireland for compulsory winding up proceedings to be commenced against Eurofood and a provisional liquidator was appointed. The Italian court took the view however that Eurofood's COMI was in Italy, and that it therefore had international jurisdiction to decide on Eurofood's insolvency. The Irish High Court confirmed that the COMI was in Ireland and refused to recognise the judgment of the Italian Court.

The CJEU highlighted, for the first time, the autonomous meaning of the term COMI and then emphasised that it must be identified by reference to criteria that are both objective and ascertainable by third parties.

The CJEU stressed that the mere control of a subsidiary by its part company was not sufficient to rebut the presumption laid down by EIR 2000 that the place of the registered office is presumed to be the COMI. The CJEU spent gave very little attention to studying the nature of the business operations performed by Eurofood. The CJEU found in favour of the Irish court, but the decision has been criticised for not giving more guidance. The CJEU found that the location of a company's registered office is key to determining its COMI.

Based on Eurofood, the Dublin High Court appears to have international jurisdiction to open the requested insolvency proceedings because Cardinal Home is registered in Ireland (and therefore would have its registered office in Ireland).

Question 4.2 [maximum 5 marks] 5

Assume that the Dublin High Court opens the respective proceeding on 30 June 2017. Will the EIR Recast be applicable? Your answer should address the EIR Recast's scope and contain **all** steps taken to answer the question.

In determining whether EIR Recast is applicable, it is important to consider its temporal scope, personal scope, material scope and geographical scope.

First, it must be determined whether the debtor has a COMI in a Member State. Cardinal Home does have a COMI in a member state because it is registered in Ireland.

The debtor must not be a bank, insurance company or other excluded undertaking. Cardinal Home is a furniture company, so is not excluded from EIR Recast.

Annex A provides a list of names of insolvency proceedings for all 27 countries covered by the EIR Recast. Examinership is listed in Annex A and therefore falls within EIR Recast.

Finally, the proceeding was opened after 26 June 2017 (it was opened on 30 June 2017), so it is caught by EIR Recast.

Because all of these four requirements have been answered the affirmative, EIR Recast is applicable.

Question 4.3 [maximum 5 marks] 3

An Italian bank files a petition to open secondary insolvency proceedings in Italy with the purpose of securing an Italian insolvency distribution ranking. Given the facts of the case, can such proceedings be opened in Italy under the EIR Recast? Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

While main insolvency proceedings are linked to the COMI of an insolvent debtor (which in this case would be presumed to be Ireland), secondary proceedings can be opened in any country where the debtor has an establishment (Article 3(2)).

According to Article 2(10) of EIR Recast, "establishment" means any place of operations where a debtor carries out, or has carried out in the three month period prior to the request to open main insolvency proceedings, a non-transitory economic activity with human means and assets.

In the Interedil case, the CJEU examined the concept of establishment and concluded that the fact the definition connects the pursuit of an economic activity to the presence of human resources shows that a minimum level of organisation and a degree of stability are required. If follows that the presence alone of goods in isolation or bank accounts does not, in principle, satisfy the requirements for classification as an establishment.

Although Cardinal Home opened an Italian bank account, this alone would not amount to an establishment in Italy. However, it also had warehouses across Europe, including in Milan, Italy. This is much more likely to qualify as having an establishment in Italy, given the degree of organisation required to run a warehouse and the fact that this would not be a fleeting undertaking. It is likely that secondary proceedings could therefore be opened in Italy.

While your reasoning is sound, the answer is incorrect because the facts of the case do not support the finding of an establishment of Cardinal Home in Italy. The presence of assets (leased-out warehouse) in isolation, contractual relations with a local bank (including maintenance of a bank account) and *occasional* negotiations with local distributors do not qualify as 'non-transitory economic activity with human means and assets.' The requisite minimum level of organisation and a degree of stability (see para. 64 in *Interedil*) is missing.

Total marks: 13 out of 15

*** End of Assessment ***

Total marks: 44.5 out of 50.